

EXECUTIVE CHAMBERS

HONOLULU

July 13, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1374

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1374, entitled "A Bill for an Act Relating to Workers' Compensation."

The purposes of this bill are: (1) to amend section 386-98 (workers' compensation fraud violations and penalties), Hawaii Revised Statutes, to provide that: (A) when a party successfully investigates fraud and a determination is made that fraud has occurred, that party is entitled to recoup payments and attorney's fees and costs through administrative penalties; (B) when a person is charged with fraud and a determination is made that fraud has not occurred, the person is entitled to attorney's fees and costs from the initiating party, except in a criminal prosecution; and (C) no person, subject to administrative penalties in subsection (e), shall be subject to double jeopardy under another subsection; and (2) amend section 431:2-203 (enforcement regarding the insurance code), Hawaii Revised Statutes, to permit the Insurance Commissioner to investigate and enforce Hawaii Revised Statutes chapter 386 relating to workers' compensation fraud, provided that the Insurance Commissioner shall investigate and prosecute only complaints brought against an insurance carrier, a self-insured employer, or a fully insured employer.

This is another example of the Legislature proposing fake reform, which, in fact, only makes the problems worse. The people of Hawaii repeatedly asked the Legislature to reform the

workers compensation system, to provide our workers with better care, to make the claim process more efficient and to ease the crushing burden on Hawaii's businesses. Such reforms benefit both workers and businesses. Workers benefit by having a system that processes their claims quickly and efficiently and provides them the rehabilitative care they need. Businesses benefit by having a system that is less costly.

Although this bill is meant to focus on and combat workers' compensation fraud, it does not address the biggest part of the problem. It targets only insurance companies and employers for punishment. Employees and others who commit workers' compensation fraud would not be subject to penalty under this measure. If an investigation of an employer also uncovered fraud by an employee, the Insurance Commissioner could only pursue the action against the employer. Limiting the bill's scope to insurance companies and employers is unfair and inefficient and will add fuel to the argument that Hawaii is anti-business.

The people of Hawaii want to be treated fairly and to have everyone play by the rules. A handful of people don't. Instead, they pursue fraudulent insurance schemes and that increases the cost of insurance for everyone.

The Administration proposed an anti-fraud bill to pursue those who don't play by the rules. The Legislature killed it. The Administration proposed a Comprehensive Workers Compensation Reform Bill and the Legislature chopped it up into nine pieces and, one by one, killed them until only this small piece remained. And this small piece that deals with workers compensation fraud was rewritten such that it ends up making things worse.

To be effective in combating fraud, one governmental unit must be given the authority to focus and pursue fraud

wherever it occurs. This bill divides the authority, giving part to the Insurance Division to investigate employers and insurance companies and part to the Department of Labor and Industrial Relations to investigate employees and care providers. This is a recipe for failure. Problems inevitably arise when authority and jurisdiction is split between departments, and this split will make this bill unworkable.

The bill is flawed in many other ways. For example, the Legislature ignored the advice of the Attorney General, the Insurance Commissioner, and others who repeatedly testified that the Insurance Fraud Branch could not pursue Motor Vehicle Insurance Fraud unless the Branch was moved to the General Powers section of the Insurance Code. The Legislature failed to make this important technical correction. Furthermore, the bill provides no resources, i.e., funding or positions, for the Insurance Commissioner to pursue the additional workload of investigating these workers' compensation matters. The Insurance Commissioner is mandated to pursue this area of fraud without additional resources.

We proposed real solutions to the real problems facing our workers and businesses in Hawaii. The Administration's Comprehensive Workers Compensation Reform Bill provided for a more efficient system, reducing costs for businesses while at the same time providing workers with the care they need. Additionally, our Anti-Fraud Bill provided the tools to effectively combat fraud and to pursue those who don't play by the rules. We all would benefit as a result.

We need to insist that our legislators work with us to provide real solutions, pay attention to the details to make laws that will really work, and listen to the people who take time from their jobs, businesses, and families to testify in support of those real solutions.

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For the foregoing reasons, I am returning House Bill
No. 1374 without my approval.

Respectfully,

LINDA LINGLE
Governor of Hawaii